

REMARKS

Claims 16-23 and 27-41 were pending in the office action. Claims 37-41 were withdrawn as a result of applicant's response to the restriction requirement, and claims 16-23 and 27-36 currently stand rejected. Claims 37-41 are cancelled in this response. Reconsideration of the present application as amended and including claims 16-23 and 27-36 in view of the remarks that follow is respectfully requested.

Claims 16-23 and 27-36 were rejected under 35 USC § 103(a) as being unpatentable over U.S. Patent No. 5,797,909 to Michelson in view of U.S. Patent No. 5,865,847 to Kohrs et al. The Examiner asserts that it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the tapered implant teachings of Kohrs et al. to further restore lordosis in the method of Michelson by not only distracting the vertebral space in lordosis, but to also maintain it with an appropriately structured implant. Applicant traverses this assertion and respectfully submits that the references fail to teach or suggest all of the claimed limitations. Specifically, applicant is not claiming a method where the endplate is distracted in lordosis. In fact, applicant seeks to avoid distracting the endplate in lordosis so that the endplates can be maintained and prepared to accommodate implants at first and second disc space locations before the tapered implants are inserted into those disc space locations.

Specifically, each of claims 16 and 28 includes a reaming plug and recites a method that employs the same to accomplish implant insertion. Claim 16 is directed to a method which involves: distracting the disc space and preparing the first disc space location through the working channel for insertion of a first implant therein; inserting a reamer plug through the working channel into the first disc space location; preparing the second disc space location through the working channel for insertion of a second implant therein after inserting the reamer plug; inserting the second implant through the working channel into the second disc space location, the second implant being tapered to establish a desired lordotic angle between the vertebral endplates; and removing the plug from the first disc space location after inserting the second implant; and inserting the first implant into the first disc space location. In addition, claim 28 is directed to a method that

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includes: distracting the disc space and preparing a first disc space location for insertion of a first implant therein; inserting a reamer plug into the first disc space location; preparing a second disc space location for insertion of a second implant therein while maintaining the reamer plug in the first disc space location; inserting the second implant into the second disc space location, the second implant being tapered to establish a desired lordotic angle between the vertebral endplates; removing the plug from the first disc space location after inserting the second implant; and inserting the first implant in the first disc space location.

A review of Michelson and Kohrs fails to reveal any disclosure or teaching of a reaming plug that is inserted in a first disc space location while the second disc space location is prepared, and then inserting the tapered implant in the second disc space location, and thereafter removing the reaming plug from the first disc space location to accommodate insertion of the first implant in the first disc space location. Rather, each discloses preparing and inserting an implant in a first disc space location and then preparing and inserting an implant in a second disc space location. The implantation of a tapered implant at the first disc space location would change the relative angle of the vertebral bodies prior to preparation of the second disc space location. As a result, a tapered tool would have to be used to prepare the second disc space location for insertion of the second implant therein. The methods recited in claims 16 and 28 eliminate the need for tapered tools in order to prepare the second implant site, yet allow for implantation of tapered implants at first and second prepared disc space locations. The cited references fail to teach or suggest any reaming plug or the methods recited in claims 16 and 28 employing the same. Accordingly, the cited reference fail to teach or suggest the limitations recited in claims 16 and 28, and withdrawal of the rejection of claims 16 and 28 is respectfully requested.

Applicant believes that the foregoing arguments and amendments have placed claims 16-23 and 27-36 in condition for allowance. Reconsideration of the present application including claims 16-23 and 27-36 is respectfully requested. The Examiner is welcome to contact the undersigned to resolve any outstanding issues with regard to the present application.

Respectfully submitted

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